IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.9050 of 2005

B.J. Rawadka Petitioner
Vs.
Union of India & ors. Respondents

Mr.Masand with Mr.S.R.Sawant for petitioner.
Mr.Suresh Kumar for resp.nos.1 and 2.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

November 06 , 2006.

P.C.

1. The Central Administrative Tribunal, Mumbai Bench was pleased to dismiss O.A.No.698 of 2003 by its judgment dated 15/6/2005 and the same is under challenge in this petition.

2. The petitioner belongs to the scheduled caste and had joined the Central Railway as a Typist on 25/7/1961 and in due course he came to be promoted to various posts. He retired on reaching the age of superannuation on 31/7/1996 while he was holding the post of Senior Personnel Officer. In the mean while he was issued Memorandum of Charges dated 9/11/1994 levelling the following charges against him:

(i) While working as APO Thakurli Power House Shri B.J. Rawadka manipulated

appointment of 9 persons in MTP (R) CCG, who were shown as transferred from Thakurli Power House on collection of illegal gratification through one intermediary Shri Dhan Singh.

(ii) While working as SPO MTP (R) CCG Shri Rawadka demanded and accepted Rs.5,000/- each from 8 khalasis amounting to Rs.40,000/- at his residence for their transfer from MTP to other offices.

In support of the Articles of Charges, he was served with Statement of Imputation of Misconduct / Misbehaviour as well as list of documents and list of witnesses. Smt. Sunita Awasthi, Financial Adviser and Chief Accounts Officer was appointed as the Enquiry Officer whereas Smt. Chandrika Nair - Vigilance Officer (Accounts) was appointed as Presenting Officer. The Enquiry Officer conducted the departmental enquiry and submitted her report and a copy of the same was forwarded to the petitioner vide letter dated 19/4/2002 by the General Manager (Central Railways) in his capacity as the Disciplinary Authority. The petitioner submitted his reply and prayed for exoneration. However, by the

order dated 26/6/2003 the Disciplinary Authority imposed penalty of withholding of all the monthly pension otherwise admissible to the petitioner permanently along with the forfeiture of the entire gratuity and the said order was challenged in O.A. No.698 of 2003.

3. The Tribunal considered all the rival contentions, the findings of the Enquiry Officer and concluded that the impugned order dated 26/6/2003 did not call for any interference. The Tribunal also noted that the requirement of consultation with the Union Public Service Commission was duly completed and there was no infirmity on that count so as to vitiate the impugned order. It also noted that while the enquiry proceedings were in progress the applicant had submitted a representation dated 1/2/2000 to the President of India for change of Enquiry Officer on the ground of bias and it was rejected as per the order dated 16/5/2000.

4. Mr.Masand, the learned counsel for the petitioner reiterated the very same issues as raised before the Tribunal challenging the order of punishment and submitted that the Tribunal had erred

grossly in dismissing the Original Application. He emphasized that Mr. Dhan Singh, through whom the petitioner was alleged to have collected illegal gratification, was not examined inspite of the petitioner submitting such an application before the Enquiry Officer. The Tribunal held that it was for the employer to prove the charges levelled against the petitioner and it is upto the choice of the employer to decide on the witnesses to be examined before the Enquiry Officer. It was not for the charge-sheeted employee to ask for a particular witness to be examined in support of the charges. We do not find any reason to take a different view in this regard.

5. The Enquiry Officer's report shows that all the eleven witnesses (PW 1 to PW 11) listed in Annexure IV of the Charge Memorandum were examined before her and out of these eleven witnesses, nine were the appointees who confirmed before the Enquiry Officer that they had paid an amount of Rs.10,000/- each to the petitioner through Mr. Dhan Singh and they had seen Mr. Dhan Singh handing over the money to the petitioner. The total modus operandi in these nine appointments was placed before the Enquiry

Officer through these witnesses and, therefore, the Enquiry Officer held that the circumstantial evidence lead to believe that the charges against the petitioner were established on the basis of the preponderance of probability and circumstantial evidence. Even before the Enquiry Officer it was claimed that there was some sort of nexus between Shri Dhan Singh and the Vigilance Department and the same was discarded by the Enquiry Officer. The Tribunal rightly accepted that the charges levelled against the petitioner were duly proved. The petitioner had also raised other legal points in support of his contentions that the enquiry was vitiated and these are, (a) the Enquiry Officer was biased; (b) he was not furnished with translated copies of the statement of witnesses; (c) the Presenting Officer was subordinate to the Enquiry Officer and the representation / reply of the petitioner submitted to the show cause notice on 10/5/2002 was not considered while issuing the order of punishment. All these points have been considered and rejected by the Tribunal by setting out detailed reasons. We are satisfied that the view taken by the Tribunal cannot be termed as perverse or grossly erroneous or illegal on any count.

6. The seriousness of the charges proved against the petitioner while working as a public servant warranted a severe punishment and by the time the enquiry proceedings were initiated, the petitioner had already retired from service. By submitting some or the other representations by the petitioner, the enquiry initiated against him was delayed. The Tribunal recorded a finding that there was no procedural lapse in conducting the departmental enquiry, in obtaining the approval from the UPSC and passing the impugned order of punishment. The well reasoned order of the Tribunal does not call for any interference and, therefore, this petition must fail at the threshold.

7. The petition is hereby rejected summarily.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)